QUESTIONS RAISED BY CANADA CONCERNING THE
U.S. OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

1. Section 1313 - Calculation of subsidies on certain processed agricultural products

It appears that, under U.S. law, subsidies provided to producers of raw agricultural products are to be deemed to be subsidies in the full amount to processors of that product if certain conditions are met. Certain circumstances may exist, however, where a processor does not benefit from the subsidized input product, such as in an arm's length transaction which permits the purchase of the subsidized input at a level which is equivalent to purchases of non-subsidized inputs. How then, in such situations, can it be said that the processor receives a subsidy?

2.a) Section 1320 - Downstream Product Monitoring

Will criteria such as the value of the parts and the extent of transformation be interpreted at the discretion of the administering authority or will there be guidelines to be used in these circumstances? If so, when will the guidelines be notified to the Committee?

Under which conditions will the administering authority decide to initiate a countervail investigation when imports of the downstream product have increased by more than 5 per cent? How will the administering authority proceed to gather sufficient evidence that the product is being subsidized in an injurious fashion before self-initiating an investigation to satisfy the requirements of Article 2.1 of the Subsidies/Countervail Code?

b) Section 1321 - Prevention of Circumvention

How will this provision be administered in the context of a countervail investigation? What conditions need to be satisfied before the administering authority opens an investigation into allegations of circumvention? Does a review of the injury

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1 See document SCM/1/Add.3/Rev.4
determination have to be conducted prior to initiating an investigation under this provision?

What is the role of the ITC in determining that products assembled domestically or in a third country fall within the scope of the existing finding? Is it possible to envisage situations where the ITC would issue a negative opinion as to the necessity of expanding the scope of the original finding but the administering authority would nonetheless issue a positive determination? If so, please explain under what circumstances such a situation might arise.

In determining whether the difference between the value of the merchandise sold in the U.S. and the value of the imported components is "small", will there be guidelines used in these circumstances? If so, what are they? How will the value of the merchandise sold in the U.S. be determined? For example, will it be the market value or the value at the ex factory level? Will it include all general administrative and selling expenses?

c) Section 1328 - Material Injury

New Section 771 (7) B (i) (I), (II) and (III) relates to the volume and consequent impact of "imports of the merchandise which is the subject of the investigation" for purpose of injury determinations. Does that provision refer to the volume of subsidized imports only or does it refer to all imports (subsidized and not subsidized) of that merchandise from the country subject to the investigation? In the latter case, how is this justified in relation to Article 6.4 of the Subsidies/Countervail Code?

d) Section 1330 - Cumulation

How does the administering authority intend to apply the definition of negligible? Will it involve quantifiable criteria? In instances where the domestic market has a low price sensitivity, will consideration be given to the amount of subsidy in determining whether some imports have had a negligible impact on the injury to domestic producers?

e) Section 1333 - Correction of Ministerial Errors

Have procedures been established for the correction of errors in final determinations?